TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 308.

JOHN W. BALLMANN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED JUNE 21, 1905.

(19,810.)

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* * * * * * *

1–47 And afterwards, to-wit: on the 3rd day of June A. D. 1905, a petition for writ of error and assignment of errors was filed in the clerk's office of said court clothed in the words and figures following, to-wit:

District Court of the United States, Southern District of Ohio, Western Division.

In the Matter of JOHN W. BALLMAN. No. 1840.

Petition for Writ of Error and Assignment of Errors.

The defendant, John W. Ballman prays for a writ of error from the Supreme Court of the United States to review the judgment and orders of the court in the above entitled proceeding, and assigns as error:

1. That the order entered April 10, 1905, as of April 7, requiring him to produce all books and papers within his control, is repugnant to the fourth and fifth amendments of the Constitution of the United States.

2. That the order of April 8, requiring him to answer certain questions concerning his ledger, which had been obtained from him by means of a judicial proceeding, is repugnant to section 860 of the Revised Statutes of the United States.

3. That the judgment committing him for contempt for refusing to answer said questions, notwithstanding his claim that an answer thereto might tend to criminate him, is repugnant to the fifth amendment of the Constitution of the United States and to section 860 of the Revised Statutes of the United States.

48 4. That there was no legal evidence to support the finding in the order of April 8th that he had said cash-book in his possession or under his control and that he had knowingly failed and refused to produce it before the grand jury.

5. That the judgment and orders committing him for contempt were made without any legal evidence to support them and are beyond the power or jurisdiction of the court and are null and void.

6. That the court erred in refusing to grant his motion to be discharged on the ground that no legal evidence of contempt had been offered and that no legal charge had been preferred against him.

7. That no legal charge of contempt was preferred against him, or legal proceedings to punish him for contempt instituted against him, and that the court was without jurisdiction to render judgment or to make any of said orders.

8. That the judgment and proceedings are without due process of law and null and void.

9. That the court refused him a reasonable opportunity to secure counsel and prepare for the hearing, and required him to proceed without a specific information and without due process.

10. That the judgment and the order of commitment are illegal and void, because they are indefinite and uncertain, and because the punishment inflicted is indeterminate, and in violation of the Constitution and laws of the United States.

11. That the court erred in receiving the following evidence:

49 (*a.*) The testimony of George F. Dieterle as to defendant's testimony before the grand jury concerning a cash-book, viz:

"Q. Will you state what he (Ballmann) said with reference to a cash book being used in his business during the month of December, 1904, and January and February and March and up to April 6, 1905?

A. The question was asked, and he said there was no such book to his knowledge."

(*b.*) The defendant's ledger and accounts No. 133 and 140 thereon being Exhibits H and I which ledger had been obtained from him by means of a judicial proceeding, and in using the same against him in this proceeding.

(*c.*) The testimony of Clements and of Hunt and of Kramer concerning said ledger.

(*d.*) The testimony of Clements that said ledger was posted from a cash book and that it showed folios of a cash book, and that certain figures thereon indicated pages of a cash-book and that other figures thereon indicated cash slips, viz: the figures 382 in account No. 133, Exhibit I, and that certain entries on said ledger were in defendant's handwriting, viz: the entries under date of January 26, 27 and 30, 1905, in account No. 140, Echibit H:

(*e.*) The testimony of Hunt that said ledger was in defendant's office on April 6 and 7, 1905, and that the witness made entries thereon on April 5th or 6th, 1905, and the meaning of said entries and of the word folio, and other words and figures on said ledger.

(*f.*) The testimony of Clements that a cash book was used in the conduct of defendant's business.

50 (*g.*) The testimony of Clements that a cash book was used for the purpose of posting the ledger in defendant's office.

(*h.*) Evidence of what the witnesses Clements, Kramer and Hunt, testified defore the grand jury, and particularly what they testified before the grand jury concerning said ledger and the meaning of figures thereon, and concerning a cash-book and the contents and use thereof.

(*i.*) Other hearsay and incompetent testimony.

(*j.*) The testimony of Clements, Hunt and Kramer concerning books other than those called for by the subpœna of April 7, 1905.

(*k.*) In permitting the district attorney to examine said witnesses as upon cross-examination, and to impeach their testimony.

The defendant prays that the judgment and orders of this court in this proceeding may be reversed, and that he may be admitted to

bail pending the judgment of the Supreme Court on his writ of error.

JOHN W. BALLMANN.

LAWRENCE MAXWELL, JR.
THOMAS F. SHAY.
MILLER OUTCALT.

51 And afterwards, to-wit: on the 3rd day of June A. D. 1905, an order of the Supreme Court, was filed in the clerk's office of this court, clothed in the words and figures following, to-wit:—

Order of Supreme Court, October Term, 1904.

JOHN BALLMANN
vs.
THE UNITED STATES.

* * * * * * *

On consideration of the application for a writ of error herein.

It is now here ordered by the court that said writ of error be, and the same is hereby, granted, to operate as a supersedeas on plaintiff in error giving bond, conditioned according to law, in the penal sum of $5,000, to be approved by the judge of the district court of the United States for the southern district of Ohio.

May 29th, 1905.

A true copy.
Test:
[SEAL.] JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

52 And afterwards, to-wit: on the 3rd day of June, A. D. 1905, a supersedeas bond was filed in the clerk's office of said court clothed in the words and figures following, to-wit:

Supersedeas Bond.

UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division.

We, John W. Ballman and George H. Yearger and Robert J. O'Brien, jointly and severally acknowledge ourselves indebted to the United States of America in the sum of five thousand dollars, lawful money of the United States of America, to be levied on our and each of our goods, chattels, lands and tenements upon this condition.

Whereas the said John W. Ballman has sued out a writ of error from the judgment of the district court of the United States for the southern district of Ohio, western division, in the contempt proceed-

ings in said court against the said John W. Ballman for a review of said judgment in the Supreme Court of the United States:

Now if the said John W. Ballman shall appear and surrender himself in the district court of the United States for the southern district of Ohio, western division, on and after the filing in the said district court of the mandate of the Supreme Court, and from time to time thereafter, as he may be required, to answer any further proceedings and abide by and perform any judgment or order which may be had or rendered thereafter in said case, and shall abide by and perform any judgment or order which may be rendered in the Supreme Court of the United States, and shall pay the damages and costs awarded against him, then this obligation shall be void,
53 otherwise to remain in full force and virtue.

Witness our hands and seals this 3rd day of June, 1905.

JOHN W. BALLMANN.
GEORGE H. YEARGER.
ROBERT J. O'BRIEN.

Taken and approved this 3rd day of June 1905, before me.

A. C. THOMPSON,
Judge of the United States District Court,
Southern District of Ohio.

UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

I George H. Yearger one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth ten thousand dollars in real estate in my own name; situate in the county of Hamilton in said district.

GEORGE H. YEARGER.

Sworn to before me 22nd day of April 1905.

JOHN R. SHINDEL,
[SEAL.] Notary Public, Hamilton County, Ohio.

SOUTHERN DISTRICT OF OHIO, ss:

I, Robert J. O'Brien, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth ten thousand dollars in real estate in my own name, situate in the county of Hamilton in said district.

ROBERT J. O'BRIEN.

Sworn to before me the 22nd day of April 1905.

[SEAL.] JOHN R. SHINDEL,
Notary Public, Hamilton County, Ohio.

54 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

I, Benjamin R. Cowen, clerk of the district court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above entitled cause as the same appears of record and on file in the clerk's office of said court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Cincinnati, Ohio, this 7th day of June A. D. 1905.

[Seal United States District Court, Southern Dist. Ohio.]

B. R. COWEN, Clerk,
By ROB'T C. GEORGI,
Deputy Clerk.

55 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judge of the district court of the United States for the southern district of Ohio, western division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between The United States, plaintiff, and John W. Ballmann, defendant, in proceedings for contempt, a manifest error hath happened, to the great damage of the said John W. Ballmann as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of May, in the year of our Lord one thousand nine hundred and five.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
MELVILLE W. FULLER,
Chief Justice of the United States.

[Endorsed:] No. 1840. United States district court, southern district of Ohio, western division. In the matter of John W. Ballman. *Ex parte.*

56 UNITED STATES OF AMERICA, ss:

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the district court of the United States for the southern district of Ohio, western division, wherein John W. Ballmann is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of May, in the year of our Lord one thousand nine hundred and five.

MELVILLE W. FULLER,
Chief Justice of the United States.

Service acknowledged June 3, 1905.
SHERMAN T. McPHERSON,
United States Attorney, S. D. O.

57 [Endorsed:] No. 1840. United States district court, southern district of Ohio, western division. In the matter of John W. Ballman. *Ex parte.*

58 Supreme Court of the United States, October Term, 1905.

JOHN W. BALLMANN, Plaintiff in Error,
v.
THE UNITED STATES. } No. 308.

Stipulation.

Whereas the matter appearing from pages one (1) to forty-six (46), inclusive, in the transcript of the record herein is identical with that already printed in the transcript of the record in the case of John W. Ballmann, appellant, v. Vivian J. Fagin, etc., No. 240, now before the court, it is hereby stipulated by and between counsel for the parties herein that the same may be omitted in the printing of the record herein.

LAWRENCE MAXWELL, JR,
Counsel for Plaintiff in Error.
H. M. HOYT, Solicitor General.

November 8, 1905.

59 [Endorsed:] File No. 19810 Supreme Court U. S. October term, 1905 Term No. 308. John W. Ballmann, pl'ff in error, vs. The United States. Stipulation to omit part of record in printing. Filed Nov. 13, 1905.

Endorsed on cover: File No. 19,810. S. Ohio D. C. U. S. Term No. 308. John W. Ballmann, plaintiff in error, vs. The United States. Filed June 21st, 1905. File No. 19,810.